

AMENDED IN SENATE MAY 19, 2010

SENATE BILL

No. 1410

Introduced by Senator Cedillo

February 19, 2010

An act to amend Section 2177 of, and to add Sections 2177.5 and 2177.7 to, the Business and Professions Code, relating to medicine, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 1410, as amended, Cedillo. Medicine: licensure examinations.

Existing law, the Medical Practice Act, requires the Medical Board of California to issue a physician's and surgeon's certificate to a qualified applicant. Under the act, an applicant for a physician's and surgeon's certificate is required to include specified information with his or her application and to obtain a passing score on an entire examination or on each part of an examination. Existing law authorizes applicants to take the written examinations conducted or accepted by the board in separate parts, *and requires the board to adopt by resolution the passing score for each examination or each part of an examination*. Existing law requires an applicant to obtain a passing score on ~~Part~~ Step III of the United States Medical Licensing Examination within not more than 4 attempts of taking that part of the examination.

This bill would delete the prohibition on taking ~~Part~~ Step III of the United States Medical Licensing Examination more than 4 times, and would make that change retroactive to January 1, 2007. The bill would also require the board to accept as a passing score from an applicant the passing score that was adopted by the board and in effect on the date the applicant registered for that examination or part of the examination, and would make that requirement retroactive to January

1, 2007. The bill would further require the board to ~~adopt a formal process for determining whether to adopt recommended passing scores from the Federation of State Medical Boards~~ *act by passing a resolution every time it adopts a passing score for an entire examination or for each part of an examination that is required for certification, subject to specified requirements and in conformity with the court's holding in Marquez v. Medical Board of California (2010) 182 Cal.App.4th 548.*

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) Under Section 2177 of the Business and Professions Code,
4 an applicant who is seeking a physician's and surgeon's certificate
5 in California must obtain a passing score on ~~Part Step~~ III of the
6 United States Medical Licensing Examination (USMLE) within
7 not more than four attempts in order to be eligible for a certificate.
8 The examination has three ~~parts~~ steps. However, only ~~Part Step~~
9 III has a limit on the number of times that an applicant may attempt
10 to pass the ~~part~~ step.

11 (b) The USMLE is administered by the Federation of State
12 Medical Boards (FSMB), a national nonprofit entity. Periodically,
13 the FSMB recommends passing scores to the various state medical
14 boards. It is left to the discretion of each state board to determine
15 whether to adopt the recommended score. Historically, the Medical
16 Board of California (MBC) has not had a formal procedure
17 regarding adoption of the FSMB recommended passing score.

18 (c) When an applicant registers for the USMLE, he or she has
19 an eligibility period of three months in which to take the
20 examination. Multiple examination dates are available within the
21 three-month period. The lack of a formal adoption process within
22 the MBC, combined with a three-month window to take the
23 examination after registration, has created some confusion as the
24 MBC may increase the accepted passing score at any time without
25 public record, input, or notification to applicants ~~that~~ *who* have
26 already registered for the examination. ~~In fact, there is an instance~~

1 where an applicant registered for the USMLE under one passing
2 score and found out after her examination date that the accepted
3 passing score had been increased without her knowledge. This
4 applicant would have passed the examination under the criteria in
5 place when she registered for the examination but because the
6 passing score was increased between the time she registered and
7 sat for the examination, she did not pass.

8 (d) Furthermore, prior to the enactment of Chapter 843 of the
9 Statutes of 2006 (AB 1796), California did not limit the number
10 of times an applicant may take any part of the USMLE. Under the
11 new law, which places an arbitrary limit of attempts on ~~Part Step~~
12 III of the examination, highly qualified and much needed
13 physicians and surgeons are being denied a license to practice
14 medicine in California. Their only option is to move to another
15 state, become licensed and practice there, and return four years
16 later.

17 (e) Failing to pass the USMLE under an arbitrary cap on the
18 number of attempts does not translate into a lack of competency
19 in providing high-quality medical care. Furthermore, existing law
20 does not take into consideration learning disabilities, a history of
21 poor performance on standardized tests, hardships, or other
22 variables that may impede the ability of an individual to pass the
23 examination, essentially discriminating against certain applicants.

24 (f) ~~Twenty-eight~~ *Twenty-seven* states in the United States and
25 ~~one territory~~ *two territories* have more lenient policies regarding
26 the USMLE, which may include having no cap or allowing for
27 more attempts than California. Those states and ~~the one territory~~
28 *territories* include AL, AZ, CO, CT, DE, FL, GU, HI, IA, IL, KS,
29 MA, MI, MN, MS, MT, NM, NV, NJ, NY, NC, ND, OH, OK, PA,
30 TN, VA, VI, and WY. In fact, AZ, CO, CT, DE, GU, HI, IA, KS,
31 MA, MI, MN, MS, MT, NJ, NY, NC, ND, OH, PA, TN, VI, VA,
32 and WY have no limit on the number of times an applicant may
33 take the examination.

34 (g) Lastly, even though ~~AB Assembly Bill~~ 1796 was signed by
35 the Governor, he expressed concerns with the measure. The
36 Governor issued a signing message stating that ~~AB Assembly Bill~~
37 1796 failed to provide the appropriate exceptions to the requirement
38 that physicians and surgeons applying for licensure pass ~~Part Step~~
39 III of the USMLE within four attempts, and that ~~AB Assembly Bill~~
40 1796 may have unintended consequences. The Governor requested

1 that the MBC address his concerns. Subsequently, the MBC
2 requested that language be added to Section 2177 of the Business
3 and Professions Code that would cross-reference Section 2135.5
4 of the Business and Professions Code to exempt from the
5 four-attempt limitation an applicant who holds an unlimited and
6 restricted license as a physician and surgeon in another state and
7 who has held that license continuously for a minimum of four
8 years prior to the date of application. This amendment was added
9 by Chapter 588 of the Statutes of 2007 (SB 1048), which was an
10 omnibus bill for the Senate Committee on Business and
11 Professions.

12 (h) The inclusion of those changes by ~~SB~~ *Senate Bill* 1048 has
13 proven to be an inadequate approach to addressing the need for
14 flexibility and consideration of other factors that may contribute
15 to an individual failing to pass ~~Part~~ *Step* III of the USMLE within
16 four attempts. It is now viewed by the Legislature as unreasonable
17 to require an individual to leave the state, go through all the steps
18 necessary to obtain licensure in another state, and then return to
19 California after four years to obtain a license to practice medicine.

20 (i) It is further unreasonable for the MBC to change the passing
21 score for an examination once an applicant has registered for that
22 examination without any formal procedure or notification to the
23 applicant.

24 SEC. 2. Section 2177 of the Business and Professions Code is
25 amended to read:

26 2177. (a) A passing score is required for an entire examination
27 or for each part of an examination, as established by resolution of
28 the board.

29 (b) Applicants may elect to take the written examinations
30 conducted or accepted by the board in separate parts.

31 (c) An applicant shall have obtained a passing score on ~~Part~~
32 *Step* III of the United States Medical Licensing Examination in
33 order to be eligible for a physician's and surgeon's certificate.

34 (d) The changes made to subdivision (c) by the act adding this
35 subdivision shall apply retroactively to January 1, 2007.

36 SEC. 3. Section 2177.5 is added to the Business and Professions
37 Code, to read:

38 2177.5. (a) Notwithstanding subdivision (a) of Section 2177,
39 the board shall accept as a passing score on an examination or part
40 of an examination from an applicant the passing score that was

1 adopted by the board and in effect on the date the applicant
2 registered for that examination or part of the examination.

3 (b) This section shall apply retroactively to January 1, 2007.

4 SEC. 4. Section 2177.7 is added to the Business and Professions
5 Code, to read:

6 2177.7. ~~The~~ (a) Pursuant to Sections 2177 and 2184, the board
7 shall adopt a formal process for determining whether to adopt
8 recommended passing scores from the Federation of State Medical
9 Boards. resolution every time the board adopts a passing score
10 for an entire examination or for each part of an examination that
11 is required for certification under this article.

12 (b) The resolution required pursuant to subdivision (a) shall be
13 adopted or readopted at a public meeting of the board, and subject
14 to public input and an affirmative vote of a majority of board
15 members present at the meeting constituting at least a quorum.

16 (c) The board shall not delegate to any other entity, whether by
17 contract or resolution, the responsibility to adopt the passing score
18 described in this section. If the board adopts the recommended
19 passing score of another entity as its passing score for an
20 examination or any part of an examination and that the entity
21 subsequently changes that recommended passing score, the board's
22 passing score shall not be changed unless the board readopts that
23 recommended passing score, or adopts some other score, by
24 resolution pursuant to this section.

25 (d) The passing score to be adopted pursuant to this section
26 shall be stated as a numerical score and shall not be stated as a
27 percentage of correct answers.

28 SEC. 5. (a) It is the intent of the Legislature in enacting Section
29 4 of this act that the Medical Board of California comply with the
30 court's holding in *Marquez v. Medical Board of California* (2010)
31 182 Cal.App.4th 548.

32 (b) Sections 2177 and 2184 of the Business and Professions
33 Code unambiguously require the Medical Board of California to
34 establish a passing score for Step III of the United States Medical
35 Licensing Examination and to do so by resolution.

36 (c) The board shall adopt a passing score by means of a formal,
37 memorialized public vote. This single, unambiguous statutory
38 requirement is intended to keep the board accountable to the
39 Legislature, the medical professions, medical license applicants,

1 *and the public, and to prevent the board from delegating this*
2 *responsibility to anyone else.*

3 ~~SEC. 5.~~

4 SEC. 6. This act is an urgency statute necessary for the
5 immediate preservation of the public peace, health, or safety within
6 the meaning of Article IV of the Constitution and shall go into
7 immediate effect. The facts constituting the necessity are:

8 In order to allow for the licensure of competent physicians and
9 surgeons at the earliest possible time, it is necessary that this act
10 take effect immediately.